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| EXAMINER |
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LUGO, CARLOS

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| ART UNIT | PAPER NUMBER |
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3676

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,135

Applicant(s)

WALLS ET AL.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>attachments #1 and #2</u> . |

DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on May 5, 2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-10,17,18,20-23, and 32 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,109,494 to Allemann.

Regarding claims 1,2,20-23, and 32, Allemann discloses a device for operating a lock comprising a member (57) having a first position (Figure 2) in a first configuration (Figure 5) and a second different position (Figure 8) in a second configuration (Figure 7). The member has structure adapted to cooperate with the lock assembly.

A handle (24) has a first position representing an unlocked position and a second position representing a locked position.

However, Allemann fails to disclose that the handle is operably and adjustably connected to the member such that the first position of the handle when the member is in the first position is the same as the first position of the handle when the member is in the second position or that the second position of the handle when the member is in the first position is the same as the second position of the handle when the member is in the second position.

Allemann illustrates that the handle (24) is operably and adjustably connected to the member such that the first position of the handle when the member is in the first position (Figure 2) is different as the first position of the handle when the member is in the second position (Figure 8).

However, Allemann discloses that in order to change from a right hand side door assembly to a left hand side door assembly, all that is necessary is to rotate the position of the bell crank 60 from the position illustrated in Figure 2 to the position illustrated in Figure 8.

The fact that the member (57) is positioned in a different position (horizontal instead of vertical, as seen in Figure 2) is a design consideration since it will not affect the rotation of the handle (24) in the opposed position. All other functions operate as usual (Col. 4 Line 60 to Col. 5 Line 12).

Therefore, it would have been obvious to one having ordinary skill in the art of latches at the time the invention was made to provide the handle in the same position when the member is at either first or second positions, since it is considered as a design consideration within the art that will not affect the latch mechanism.

As to claim 3, Allemann illustrates that the handle first position is capable of representing an unlocked position and the handle second position is capable of representing a handle locked position (Figures 2 and 6).

As to claims 4 and 5, the fact that in the unlocked position, the handle has a generally vertical configuration and in the locked position, the handle has a generally

horizontal configuration is considered as a design consideration within the art since, as explained above, it would not affect the device mechanism.

As to claim 6, Allemann discloses that in the member first position, the member structure is adapted to cooperate with the lock assembly configured for a right hand door (Figures 2 and 5).

As to claim 7, Allemann discloses that that in the member second position, the member structure is adapted to cooperate with the lock assembly configured for a left hand door (Figures 7 and 8).

As to claim 8, Allemann discloses that the second position of the handle is rotationally displaced from the first position of the handle (from Figure 2 to Figure 6).

As to claims 9 and 10, Allemann illustrates that in the handle is rotationally displaced substantially 90° from the first position of the handle to the second position (from Figures 2 to Figure 6).

As to claim 17, Allemann illustrates that the member (57) has a generally rectangular cross-section adapted to cooperate with an aperture (58) of a lock member of the lock assembly.

As to claim 18, Allemann illustrates that the handle (24) is a thumbturn.

4. **Claims 11-16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,109,494 to Allemann as applied to claim 1 above, and further in view of US Pat No 4,453,753 to Fayerman et al (Fayerman '753).

Allemann fails to disclose that the member is offset to a vertical axis. Allemann disclose that the member is aligned with a vertical axis.

Fayerman '753 teaches that it is well known in the art to have a handle (20) connected to a member (30), which is connected to a lock assembly, wherein the member (30) is offset from a vertical axis (Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the member described by Allemann offset from a vertical axis, as taught by Fayerman '753, because the fact that the member is offset or not from a vertical axis is considered as a design consideration within the art because the position of the member does not affect the mechanism movement.

5. **Claim 19 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,109,494 to Allemann as applied to claim 1 above, and further in view of US Pat No 299,633 to Flinn.

Allemann fails to disclose that the handle has first and second apertures so as to receive a fastener to connect the member to the handle.

Flinn teaches that it is well known in the art to have a handle (A) connected to a member (D), wherein the handle presents first and second apertures (a, b, and c) so as to receive a fastener (f) in order to connect the member and the handle at a desire configuration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle described by Allemann with several apertures, as taught by Flinn, in order to connect the member and the handle at a desire configuration or to disengage the handle and the member at any event.

6. **Claims 26-29 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,109,494 to Allemann in view of US Pat No 4,671,089 to Fleming et al (Fleming '089).

As to claims 26 and 29, Allemann discloses a device for operating a lock comprising a member (57) having a first position (Figure 2) in a first configuration (Figure 5) and a second different position (Figure 8) in a second configuration (Figure 7). The member has structure adapted to cooperate with the lock assembly.

A handle (24) has a first position representing an unlocked position and a second position representing a locked position.

However, Allemann fails to disclose that the handle is operably and adjustably connected to the member such that the first position of the handle when the member is in the first position is the same as the first position of the handle when the member is in the second position or that the second position of the handle when the member is in the first position is the same as the second position of the handle when the member is in the second position.

Allemann illustrates that the handle (24) is operably and adjustably connected to the member such that the first position of the handle when the member is in the first position (Figure 2) is different as the first position of the handle when the member is in the second position (Figure 8).

However, Allemann discloses that in order to change from a right hand side door assembly to a left hand side door assembly, all is necessary is to rotate the position

of the bell crank 60 from the position illustrated in Figure 2 to the position illustrated in Figure 8.

The fact that the member (57) is positioned in a different position (horizontal instead of vertical, as seen in Figure 2) is a design consideration since it will not affect the rotation of the handle (24) in the opposed position. All other functions operate as usual (Col. 4 Line 60 to Col. 5 Line 12).

Therefore, it would have been obvious to one having ordinary skill in the art of latches at the time the invention was made to provide the handle in the same position when the member is at either first or second positions, since it is considered as a design consideration within the art that will not affect the latch mechanism.

Further, Allemann fails to disclose that the device further comprises an adaptor connecting the member to the handle.

Fleming '089 teaches that it is well known in the art to provide an adapter (101) having a slot that receives a member to connect the member with the handle.

It would have been obvious to one having ordinary skill in the art of latches to provide the device described by Allemann with an adaptor, as taught by Fleming '089, in order to connect the member with the handle.

As to claims 27 and 28, Allemann illustrates that the member (57) has a generally rectangular cross-section adapted to cooperate with an aperture (58) of a lock member of the lock assembly.

7. **Claims 30 and 31 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 4,109,494 to Allemann in view of US Pat No 4,671,089 to Fleming et al

(Fleming '089) as applied to claim 29 above, and further in view of US Pat No 299,633 to Flinn.

Allemann, as modified by Fleming '089, fails to disclose that the adaptor is fastened to the member by a screw.

Flinn teaches that it is well known in the art to have a handle (A) connected to a member (D) by means of an adaptor (B), wherein the adaptor is fastened to the member by means of screws (f).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the adaptor described by Allemann, as modified by Fleming '089, with several apertures, as taught by Flinn, in order to fixedly secure the member and the adaptor.

Response to Arguments

8. Applicant's arguments filed on May 5, 2006 have been fully considered but they are not persuasive.

The applicant argues that Allemann fails to disclose that the handle is operably and adjustably connected to the member (Page 8 Line 10). The applicant further argues that Allemann teaches that the member 57 is press fit into the handle 24, therefore is not considered "adjustably" (Page 9 Line 1).

Allemann discloses that the handle 24 has a shaft 55 that is tubular and receives the member 57. The member is slidably and non-rotatably received in one portion of a milled cross-slot 58. In other words, the member 57 can be placed in the horizontal

part of the cross-slot or in the vertical part of the cross-slot. Therefore, the member is capable of being adjustably coupled to the handle. The rejection is maintained.

The applicant further argues the use of hindsight by saying that the it would be a design consideration to provide the handle in the same position when the member is at either first or second positions just because it will not affect the latch mechanism (Page 10 line 5).

First, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Second, the applicant is invited to look at attachment #1. Attachment #1 is a view of the assembly at a right hand side in the first position, not extended. In this view, the handle 24 is in a horizontal position.

Attachment #2 is a view of the assembly at a left hand side in the second position, extended. In this view, the handle 24 is in a horizontal position, making the first position of the handle in a vertical position.

But, since the member 57 can be placed in the horizontal part of the cross-slot or in the vertical part of the cross-slot, the handle 24 is capable of being placed in the

same position for either position of the assembly. Therefore, the rejection is maintained.

Same response is applied to the applicant's arguments with respect to claims 20 and 21 (Page 11 Line 1), claims 22 and 23 (page 11 Line 22), and claim 32 (Page 12 Line 17).

The applicant further argues that Fayerman fails to disclose a right and left mounting configurations (Page 13 Line 3). The applicant is reminded that the rejection is in view of Allemann, as modified by Fayerman. Fayerman is only used to demonstrate that it is well known in the art to have a handle (20) connected to a member (30), which is connected to a lock assembly, wherein the member (30) is offset from a vertical axis (Figure 1).

The applicant also argues that Flinn fails to disclose that the handle is operably and adjustably connected to the member such that the first position of the handle when the member is in the first position is the same as the first position of the handle when the member is in the second position. Applicant is one again reminded that the rejection is in view of Allemann, as modified by Flinn, Flinn is only used to demonstrate that it is well known in the art to have a handle (A) connected to a member (D), wherein the handle presents first and second apertures (a, b, and c) so as to receive a fastener (f) in order to connect the member and the handle at a desire configuration.

The applicant further argues that Fleming '089 fails to disclose an adapter adjustably connected to the handle (Page 14 Line 11). At the instant, Fleming '089

teaches that it is well known in the art to provide an adapter (101) having a slot that receives a member to connect the member with the handle. Therefore, the rejection is maintained.

As to the applicant's arguments with respect to the rejection in view of Allemann, as modified by Fleming '089 and Flinn (Page 16 Line 7), see arguments presented above.

As to the rejection of the claims in view of Fleming '089, as modified by Fleming '144 (Page 17 Line 1), the current amendment, that the first and second positions of the handle are first and second angular positions, overcomes the rejection. Therefore, the rejection has been withdrawn.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3676

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058.

The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

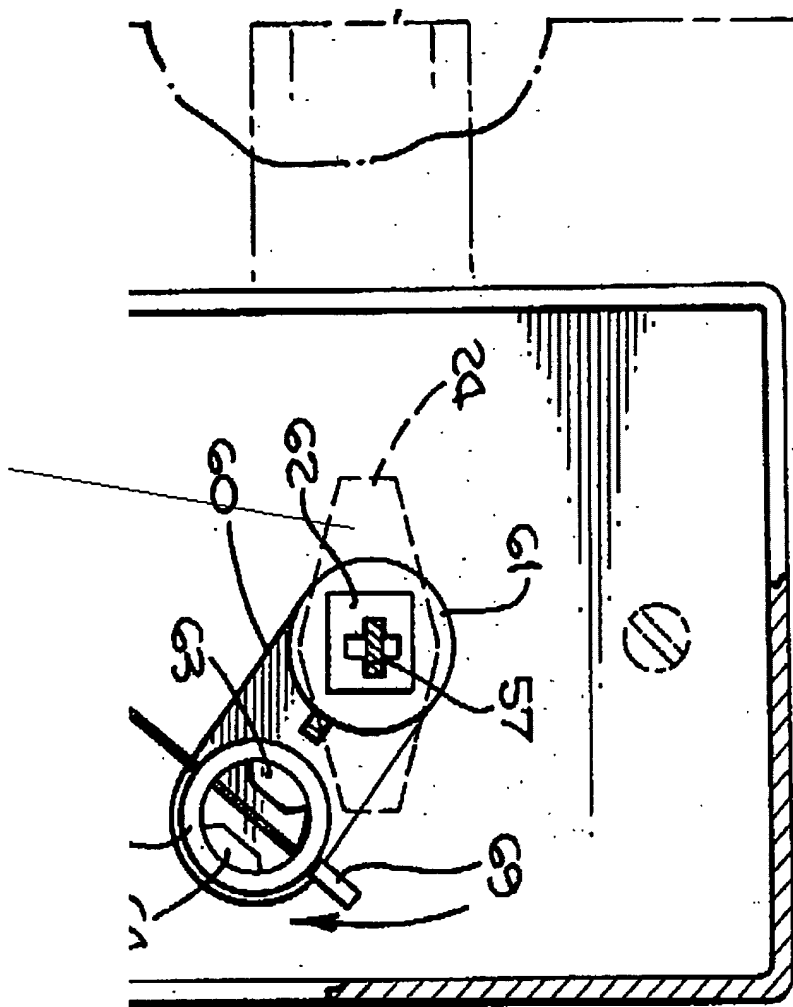
C.L.

Carlos Lugo
Patent Examiner AU 3676
July 6, 2006.



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER

Handle in the first position for a right
hand assembly



Handle in the second position for a left hand side assembly

